

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
F.R.A Nos.1, 2, 3, 4, 5, 6, 7, 8 and 9 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of Hearing : 25.05.2023.
Date of Order : 25.05.2023.

Mr. Ghulam Sarwar Qureshi, Advocate for Appellants in
F.R.A Nos.1 to 6 of 2023.

Mr. Muhammad Sulleman Unar, Advocate for Appellants in
F.R.A No.7 of 2023.

Mr. Parkash Kumar, Advocate for Appellants in
F.R.A Nos.8 and 9 of 2023.

M/s Gulab Khan Kaimkhani, Umer Ilyas Khan and Muhammad
Kaleemullah Memon, Advocates for Respondent.

ORDER

MUHAMMAD FAISAL KAMAL ALAM- J,- After going through the Record of all the Appeals, they can be divided into three Categories. **Category-A** is of First Rent Appeals [FRA] 1 to 6 of 2023 in which the impugned Order dated 07.12.2022 has struck off the defence of Appellants of these Appeals on the ground that they have failed to deposit the enhanced rent of Rs.15,000/- in the Court as ordered earlier vide Tentative Rent Orders {TRO} dated 21.10.2020 and 10.08.2022. Learned Counsel for the Appellants states by referring to Page-66 that Receipts of depositing of rent also are available and the Order is contrary to Record; whereas, legal team of Respondent No.1 (Kaimkhani Trust) has rebutted the arguments by referring to their Counter Affidavit that the impugned Order is passed on the basis of record submitted by the Accounts Office and a relevant page of the Ledger is appended with the Counter Affidavit, showing the default. Whereas, in the

F.R.A numbers 5 and 6, it is stated by the Respondent's Counsel by referring to Ground No.2 of the Appeal, that the Appellants have admitted that they could not deposit the enhanced amount of Rs.15,000/- due to their financial condition and hence, these Appeals may be dismissed at the outset.

2. **Category-B** comprises of F.R.A Nos.7 and 8 of 2023 in which the Tentative Rent Orders of 02.02.2022 have been challenged, so also the subsequent Order dated 11.01.2023, for striking off the defence of the Appellants [of this Category], wherein, it is stated that on 02.02.2022, a Tentative Rent Order was passed directing the Appellants to deposit Rs.15,000/- per month with effect from September, 2021 onwards; whereas, the Tentative Rent Order is at Pages-33 and 83 respectively, of these F.R.As in which the rate of rent is mentioned as Rs.1784/- and Rs.2013/- (respectively), which were increased to Rs.15,000/-. In this Category-B it is clarified that undisputedly there was no earlier proceeding of Section 7 of the Cantonments Rent Restriction Act, 1963 (**the said Law**), that is, for fixation of fair rent; **whereas**, F.R.A No.9 of 2023 falls in **Category-C**, wherein, the impugned Order dated 01.02.2023 has been challenged in which the defence of Appellant was struck off, because he did not deposit the amount as per the earlier Tentative Rent Order of 13.10.2021. Learned Counsel for the Appellant in F.R.A No.09 of 2023 has produced the Certified Copy of the Diary dated 13.10.2021, to show that no Tentative Order was ever passed in this proceeding, instead, the Appellant himself filed an Application for depositing the rentals in the Court. Learned Counsel has relied upon the Judgment of this Court reported in 2007 CLC 740 [Qazi ABDUL RASHID through LR.s. and 6 others v. FAZLUR REHMAN] and 2019 YLR 966 [Messrs PHARMACIE PLUS through Group Administration Head v. ABDUL LATIF and another]. In the earlier Judgment of **Qazi case**, it is held that the Application under Section 7 of

the said Law (for determining the fair rent), the maximum increase can be 25% as provided in Sub-Section 4 of Section 7 of the said Law; Consequently, the order for fixing the rent in violation of the above provision was modified and was re-fixed.

3. The legal team of Respondent Trust have rebutted the arguments and contended that the quantum of enhanced rent cannot be questioned as the same has been upheld by this Court in a number of Constitutional Petitions (leading C.P.No.S-667 of 2022); consequently, the Appellants were bound to deposit the enhanced rent of Rs.15,000/- and a default in that will result in striking off the defence, as rightly done through different impugned Orders in these Appeals. Learned Counsel has cited the Judgment of 2019 SCMR 627 [ABDUL LATIF and another v. Messrs PHARMACIE PLUS] and 2014 MLD 1304 Sindh [ASIF NAJMA ANSAIZI v. Mrs. MARIAM MIRZA and another]. The gist of the case law relied upon by the Respondent's Counsel is that once the Parties have agreed for enhancing rent, then there is no statutory bar to such an increase, but, landlord cannot further increase the rent unilaterally; whereas, in the second Judgment this Court has held that if a default is committed in not obeying the tentative tent order then the eviction is mandatory.

4. Arguments heard and record perused.

5. Adverting to the Category-A in F.R.A Nos.1 to 4 of 2023, the Appellants have referred to the above Receipts available in Record, perusal whereof shows that rental @ Rs.15,000/- (Rupees Fifteen Thousand) per month have been deposited by the Appellants. As far as Extract of Ledger is concerned, relied upon by Respondent, it is not clear that in which Month the default is committed, so also the impugned Order. Striking off defence clearly means eviction of Tenant from the premises. There is a plethora of case law that

the order passed by the learned Rent Controller for striking off defence has to be specific and period of default is to be mentioned, so also the quantum of default. The impugned Order is completely silent with regard to the above and has only relied upon a Report, but, without any discussion thereon. The relevant portion of the impugned rent Order is reproduced hereunder:-

“The report further reflects that the opponents has not complied the orders of this Court.”

6. When a Statute provides a consequence, it is mandatory in nature but at the same time while exercising an authority under such mandatory provision, the Court and Government functionary have to ensure that the provision is violated and an order passed thereunder, should give reasons. Perusal of Orders show that they are passed in haste, and even proper hearing is not afforded to the Appellants, before directing their eviction, as a consequence of striking off their defence.

Secondly, Under Section 27 of the said Law, an Order Under Section 17 cannot be passed except after holding an inquiry. The impugned Orders in these Appeals clearly show that no inquiry was held before passing such Orders therefore, the impugned Orders are nullity in the eyes of Law and are set-aside.

Thirdly, there is another contradiction in the impugned Orders, which are based on the Orders dated 21.10.2020 and 10.08.2022. Admittedly, the Order dated 21.10.2020 (Annexure-C with the Counter Affidavit of Respondent), tentative direction was given to deposit monthly rentals @ Rs.1650/- per month with certain variation in the figures in each Appeal, which is the original rate of monthly rentals; whereas, the Tentative Rent Order dated 10.08.2022 has enhanced the rate of rentals in each case / appeal from their original rentals to Rs.15,000/- per month, that is, more than the ceiling provided

under sub-Section 4 of Section 7. It is also a matter of record that in earlier round of litigation with regard to Tentative Rent Order of 21.10.2020, this Court has stated that rentals deposited in the Court of Senior Civil Judge / Rent Controller may be transferred to the Office of Rent Controller exercising powers under the Cantonments Act. Consequently, earlier Orders of Rent Controller concerning striking off defence, **was set aside**.

7. There is another inescapable legal and factual aspect of the case in this **Category-A**; which is conflicting Decisions of this Court about the enhancement of rent. In the earlier Decision of this Court in the **Qazi** case (*ibid*), it is held that no increase of more than 25% (twenty five percent) can be done under Sub-Section 4 of Section 7 of the said Law. Whereas, in the present case, the earlier Orders with regard to enhancement of rent, has been upheld by this Court in the above referred Constitutional Petitions.

The earlier Order of the Rent Controller is of 10.08.2022, available in these Rent Appeals, is perused, which is not in accordance with the statutory scheme of Section 7 and 27 of the said Law; the latter Provision – Section 27, prohibits the Rent Controller for passing any order, inter alia, Under Section 7 and 17, except after holding an inquiry. The effect of the above Order (of 10.08.2022) is that it has enhanced the rentals to almost 500% (five hundred percent).

8. Notwithstanding with the above, since the Order dated 10.08.2022 for fixation of fair rent has been upheld in the above Constitutional Petitions vide Judgment of 10.10.2022 by this Court, therefore, I cannot give a finding, except the above observation. In my considered view an authoritative pronouncement is necessary to resolve this controversy, otherwise a complexed situation will continue to occur in the Cantonment Areas where the enhancement of rent will

be done at the whims of the learned Rent Controller, rather than following the statutory provisions and prescribed determining criteria (of Statute). In my considered view a larger Bench may be constituted by the Hon'ble Chief Justice to decide this legal aspect of the case. Copy of this Order be transmitted to the learned Registrar at the Principal Seat through the learned Additional Registrar of this Circuit.

9. Adverting to the factual aspect, since Record shows that prima facie the rentals @ Rs.15,000/- are deposited by the Appellants of Rent Appeal Nos.1 to 4, thus, the impugned Order about striking off their defence is set aside so also for the reason that it is in violation of Section 27 of the Law (*ibid*). Matters are remanded to learned Rent Controller for deciding them afresh in accordance with law, record and considering the above observation. Accordingly, F.R.As No.1 to 4 of 2023 are allowed in the above terms.

10. Adverting to the **Category-B** in F.R.A Nos.7 and 8 of 2023. The Respective Advocates have taken the same stance by showing the rent Receipts available in Record issued by the Office of Controller of Rent in which it is mentioned that amount @ Rs.15,000/- has been regularly deposited and the last Receipt is of January, 2023. It is held that both the impugned Orders passed in these matters are given without application of mind and considering the case law developed on this very issue about striking off defence, in which the order has to be specific, so also rate of rent and month of default; besides not only the impugned Orders are illegal and in violation of Section 27 (*ibid*), but also the earlier Order of determining the 'fair rent'. In fact instead of determining a fair rent for the Premises in question, an unfair Rent is determined, hence the said Orders of 02.02.2022 are also set-aside. Both F.R.As are accepted and Appellants will continue to pay the original / old rentals, unless there is a fresh

determination / adjudication of fair rent. Consequently, these Appeals are also allowed and the impugned Orders are set-aside.

11. Adverting to the **Category-C**. The Record shows that there was no Tentative Rent Order earlier passed in this matter and the impugned Order is passed in undue haste and in a slipshod manner, which cannot be sustained and therefore, is set aside and the case is remanded to learned Rent Controller for decision afresh. This F.R.A is also allowed.

12. Whereas, the Appellants of F.R.A Nos.5 and 6 of 2023 are concerned, it is averred that they have faithfully deposited the rentals at the agreed rate but not the enhanced rate. But no documentary evidence is referred, because when these Appeals were taken up, it is informed (though surprisingly) by other Counsel, that Appellants' Advocate has left the Court Room, as he was not feeling well.

Since this issue of enhanced rent may be considered by a larger Bench and in other F.R.As No.7 and 8 of 2023, the Tentative Rent Order is set-aside, thus, in all fairness benefit be extended to these Appellants of F.R.A Nos.5 and 6/2023. Therefore, in these two Appeals also the impugned Orders are set aside and matters are remanded to learned Rent Controller who will consider the plea of these two Appellants that whether they are faithfully depositing the rentals at old rate or not and if they are not depositing the rentals hitherto, then the learned Rent Controller can pass the appropriate orders in accordance with law and after giving proper hearing.

13. It is further clarified that if the learned Advocates representing the Parties agree that they can proceed with the evidence in rent cases and request the concerned Rent Controller for decision on merits. In this latter event, if the

evidence is to be led by the Parties then it is expected that learned Rent Controller will decide the matters preferably within three (03) Months from the date of this Order.

14. In the above terms all these Appeals stand disposed of.

JUDGE

Shahid